

Central Valley Regional Water Quality Control Board

24 October 2019

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OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITY, PALOS VERDES PROPERTIES INC., CROSSINGS PHASE 2 ROUGH GRADING, EL DORADO COUNTY, WDID 5S09C385255

This letter contains an offer from the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team to settle potential claims for administrative civil liability arising out of alleged violations by Palos Verdes Properties Inc. and LLL&A, LLC (Discharger) of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) at the Crossings Phase 2 Rough Grading construction project located in Placerville (Project). As the owner of the Project and the legally responsible person enrolled in the General Permit, the Discharger is responsible for complying with all elements of the General Permit and is strictly liable for penalties associated with non-compliance. Hereafter, this letter will be referred to as the "Settlement Offer." This Settlement Offer was prepared following review of the Discharger's 10 July 2019 response letter to the Central Valley Water Board's initial 14 June 2019 Settlement Offer.

This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violations through payment of one hundred seventy thousand nine hundred seventy-six dollars (\$170,976).

Please read this letter carefully and respond no later than 27 September 2019.

DESCRIPTION OF VIOLATIONS

Discharge Violation - During site inspections on 18 January 2019, 4 February 2019, 12 February 2019, and 13 February 2019, Board staff observed large disturbed areas of the project that were inactive and did not have erosion control Best Management Practices (BMPs) installed, as required by the General Permit. The Discharger constructed two retention basins to capture turbid storm water from the unprotected disturbed soil areas; however, these basins did not have adequate capacity to store storm water through the winter. Impounded storm water needed to be removed to avoid

KARL E. LONGLEY ScD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

a failure of the basin's berms and to prevent an uncontrolled discharge of turbid storm water.

Board staff observed turbid storm water being pumped from a retention basin to an adjacent hillside and discharging from the Project site during the 4 February 2019 and 13 February 2019 inspections. No additional BMPs were implemented to reduce the turbidity of the pumped discharges. The turbidity of the storm water discharge was measured by Board staff at the bottom of the hillside, after mixing with clear runoff from other portions of the hillside, at 870 Nephelometric Turbidity Units (NTU). The turbidity was above the 250 NTU Numeric Action Level (NAL) in the General Permit, which triggers dischargers to take corrective actions. Board staff measured the turbidity of pumped storm water to be over 2,400 NTU during the 13 February 2019 inspection. Following the 13 February 2019 inspection, the Discharger initiated the installation of an Active Treatment System to correct the discharge violation. The system was operational and discharging water below 10 NTU during the first week of March 2019.

Risk Level Violation - During the General Permit application process, the Discharger calculated the LS factor portion of the sediment risk using post construction conditions, which incorrectly reduced the site's sediment risk from "medium" to "low". This resulted in the Project registering as a Risk Level 1 project instead of a Risk Level 2 project. By incorrectly determining the Project's Risk Level, the Discharger avoided the more stringent Risk Level 2 inspection, BMP, and monitoring requirements.

Board staff issued a Notice of Violation on 4 February 2019 requiring a re-evaluation of the Project's Risk Level by 28 February 2019. The Discharger did not provide the requested evaluation. Board staff issued another NOV on 12 March 2019 which again required the submittal of a revised Risk Level calculation by 22 March 2019. On 14 April 2019, the Project's Qualified Storm Water Pollution Prevention Plan Developer/Practitioner (QSD/P) uploaded a revised Risk Level calculation into SMARTS using the required pre-construction site conditions showing that the Project was a Risk Level 2 project. A Change of Information (COI) was initiated in SMARTS to revise the Project's Risk Level by the QSD/P on 2 May 2019, but the information could not be used to change the Project's Risk Level until it was certified and submitted by the Discharger. Board staff contacted the QSD/P and Discharger by email on 24 April 2019 and 10 May 2019 requesting that the COI be certified and submitted. As of 10 June 2019, over three months since Board staff first notified the Discharger of the Risk Level miscalculation, the COI had not been certified and submitted in SMARTS and the Project was still enrolled as a Risk Level 1 project.

Attachment A contains the Water Board's 18 January 2019, 4 February 2019, 12 February 2019, 13 February 2019, and 27 February 2019 Inspection Reports and 4 February 2019, 7 February 2019, and 12 March 2019 Notices of Violation, which describe the violations.

This Settlement Offer alleges the following two violations of the General Permit: (1) the Project discharged turbid storm water because BMPs that achieved the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) standard were not used (General Permit Attachment C, Effluent Standard A.1.b.); and, (2) the Discharger failed to properly calculate sediment risk and enroll the

Project under the appropriate Risk Level (General Permit Section VIII, Risk Determination).

STATUTORY LIABILITY

Pursuant to Section 13385 of the California Water Code, the Discharger is liable for administrative civil liabilities of up to \$10,000 per violation for each day in which the violation occurs and \$10 per gallon discharged in excess of the first 1,000 gallons. The statutory minimum civil liability is the economic benefit resulting from the violations. The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) states that the minimum penalty is to be the economic benefit plus 10%. For the violations described in the attachments, the maximum potential liability for the violations is \$1,210,000 and the minimum liability is \$105,446.

PROPOSED SETTLEMENT OFFER

The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) with this Settlement Offer of \$170,976. This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13385(e) using the penalty methodology set forth in the Enforcement Policy. The enclosed "Penalty Calculation Methodology" describes in detail how the penalty amount was calculated. The Prosecution Team believes that the proposed resolution of the alleged violation(s) is fair and reasonable, fulfills the Central Valley Water Board's enforcement objectives, and is in the best interest of the public.

Should the Discharger choose *not* to accept this Settlement Offer, please be advised that the Central Valley Water Board Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint or by referring the matter to the Attorney General's Office. The Central Valley Water Board Prosecution Team also reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine the number of gallons discharged and whether additional violations occurred. Any additional violations and gallons of discharge subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a formal enforcement action and settle the alleged violation(s) by accepting this Settlement Offer. Please note that the Settlement Offer only addresses the violations specifically identified in the attached inspection reports.

Responding to the Settlement Offer

If the Discharger chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* shall be completed and submitted no later than **30 October 2019** to the following address:

Central Valley Regional Water Quality Control Board
Attention: Michael Fischer, Enforcement Section
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Important! - Upon receipt of the *Acceptance and Waiver*, this settlement will be publicly noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the Central Valley Water Board's Executive Officer to formally endorse the *Acceptance and Waiver* as an order of the Central Valley Water Board. An invoice will then be mailed to the Discharger requiring payment of the administrative civil liability within 30 days of the date of the invoice.

If, however, substantive comments are received in opposition to this settlement and/or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

If you have any questions about this settlement offer, please contact Michael Fischer at (916) 464-4663 or at michael.fischer@waterboards.ca.gov.

Original signed by

ANDREW ALTEVOGT
Assistant Executive Officer

Enclosures: Acceptance of Settlement Offer and Waiver of Right to a Hearing
Penalty Calculation Methodology

Attachment A: Central Valley Water Board 18 January 2019, 4 February 2019, 13 February 2019, and 27 February 2019 Inspection Reports, 12 February 2019 site visit summary, 4 February 2019, 7 February 2019, and 12 March 2019 NOVs

cc: Greg Gholson, U.S. EPA, Region IX, San Francisco
Nickolaus Knight, Office of Enforcement, State Water Board, Sacramento
Bayley Toft-Dupuy, Office of Chief Counsel, State Water Board, Sacramento
Patrick Pulupa, Executive Officer, Central Valley Water Board, Rancho Cordova

ORDER NO. R5-2019-0522
ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING
FOR
PALOS VERDES PROPERTIES INC.
CROSSINGS PHASE 2 ROUGH GRADING
EL DORADO COUNTY

By signing below and returning this *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* to the Central Valley Water Board, Palos Verdes Properties Inc. and LLL&A, LLC (Discharger) hereby accepts the Settlement Offer described in the letter dated 31 May 2019 and titled *Offer to Settle Administrative Civil Liability, Palos Verdes Properties Inc., Crossings Phase 2 Rough Grading, El Dorado County, WDID 5S09C385255* and waives the right to a hearing before the Central Valley Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations. The Discharger agrees to perform the following:

- Pay an administrative civil liability in the sum of **one hundred seventy thousand nine hundred seventy-six dollars (\$170,976)** by cashier's check or certified check made payable to the "State Water Resources Control Board Cleanup and Abatement Account". This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) at the Crossings Phase 2 Rough Grading construction project.

The Discharger understands that by signing this *Acceptance and Waiver*, the Discharger has waived its right to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violation(s). The Discharger understands that this *Acceptance and Waiver* does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by the Discharger, the *Acceptance and Waiver* shall be returned to the following address:

Central Valley Regional Water Quality Control Board
Attention: Michael Fischer, Enforcement Section
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

The Discharger understands that federal regulations require the Prosecution Team to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action for violations of an NPDES permit, such as the General Permit. Accordingly, this *Acceptance and Waiver*, prior to being formally endorsed by the Central Valley Water Board Executive Officer (acting as head of the Advisory Team), will be published as required by law for public comment.

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the Central Valley Water Board's Executive Officer for formal endorsement on behalf of the Central Valley Water Board.

The Discharger understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

The Discharger understands that once this *Acceptance and Waiver* is formally endorsed and an Order Number is inserted, then the full payment is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this *Acceptance and Waiver*.

PALOS VERDES PROPERTIES INC. and L L L & A, LLC

By: Original signed by Leanord Grado

Title: President and Manager

Date: 10-28-2019

IT IS SO ORDERED, pursuant to California Water Code section 13385.

By: PATRICK PULUPA, Executive Officer

Date: